

1 I "Y a través de este memo lo que usted le estaba
2 diciendo a su personal de ventas es que las piezas, eh, para
3 Tuffcare, se podían usar las piezas de Everest & Jennings? No,
4 ¿que las piezas de Tuffcare podían ser usadas en los productos
5 de Everest & Jennings?"

6 MRS. LOURDES PAGAN GONZALEZ:

7 "Sí. Correcto."

8 DEPONENT:

9 "Sí, porque... Sí, eso es correcto."

10 INTERPRETER:

11 Yes. Yes, that's correct.

12 MR. KENNETH McCULLOCH, ESQ:

13 Q And when you were distributing, uh, Tuffcare
14 products, uh, as a distributor, one of the things that you did
15 was, uh, provide service for the products in case there were
16 repairs made, correct?

17 I "Y cuando usted vendía los productos Tuffcare una de
18 las cosas que hacía era que le, le proveía el servicio en caso
19 de que fuera necesario." Uh, could, could the question be
20 repeated?

21 Q Okay.

22 MRS. LOURDES PAGAN GONZALEZ:

23 Yeah.

24 MR. KENNETH McCULLOCH, ESQ:

25 Q Okay.

1 MRS. LOURDES PAGAN GONZALEZ:

2 Quad.

3 MR. KENNETH McCULLOCH:

4 Quad. Q-U-A-D.

5 DEPONENT:

6 "Sí."

7 INTERPRETER:

8 Yes.

9 MR. KENNETH McCULLOCH, ESQ:

10 Q Okay. And, um, at the time this order was made, you
11 authorized this order to be made, correct?

12 I "Y al momento que se hizo esa orden, usted autorizó
13 que se hiciera esa orden, ¿correcto?"

14 A "Sí."

15 I Yes.

16 Q Now, in the memo, Exhibit nine (9), of July 16...

17 I "Ahora, este memorando, el Exhibit nueve (9), de
18 julio 16..."

19 Q ...Mr. Selinger... had, um, indicated there's no
20 reason to buy Tuffcare wheelchairs when we own E & J, yet you
21 ordered a large number of Tuffcare wheelchairs. Why did you do
22 that?

23 I "Ahora, en el memorando de julio 16 el señor Selinger
24 indica que no hay necesidad de comprar sillas de ruedas
25 Tuffcare, entonces, luego usted hace esa compra de muchas. ¿Por

1 | qué lo hizo?"

2 | A "Okey. Sucede que si se fijan en la orden, los
3 | precios más altos son las sillas especiales..."

4 | I Okay. It so happens that if you observe the order
5 | the highest prices are the special wheelchairs...

6 | A "...como la silla motorizada..."

7 | I ...like the motorized...

8 | MRS. LOURDES PAGAN GONZALEZ:

9 | Motorized...

10 | INTERPRETER:

11 | ...wheelchair...

12 | MRS. LOURDES PAGAN GONZALEZ:

13 | ...wheelchair.

14 | DEPONENT:

15 | "...de silla extra-ancha..."

16 | INTERPRETER:

17 | ...the extra-wide wheelchair...

18 | DEPONENT:

19 | ...recliners wheelchairs...

20 | INTERPRETER:

21 | ...recliner wheelchairs...

22 | DEPONENT:

23 | "...eh, es la mayoría de la orden, y esto se debe a que
24 | Everest & Jennings... Yo necesitaba cumplir con las
25 | necesidades de mis clientes..."

1 INTERPRETER:

2 ...and this happens because Everest & Jennings... Well,
3 you see, I had to comply with my client's needs...

4 DEPONENT:

5 "...y cuando yo ordené estas sillas..."

6 INTERPRETER:

7 ...and when I ordered these chairs...

8 DEPONENT:

9 "...a través de los almacenes de, de Everest & Jennings..."

10 INTERPRETER:

11 ...through the Everest & Jennings, uh, warehouse...

12 DEPONENT:

13 "...no las tenían todas disponibles para cumplir con
14 nuestras necesidades."

15 INTERPRETER:

16 ...they didn't have them all available in order to fulfill
17 our needs.

18 DEPONENT:

19 "Como continuamente nos, nos exigían mayores números..."

20 INTERPRETER:

21 Since they were continuously, uh, demanding higher numbers
22 from us...

23 DEPONENT:

24 "...yo lo que andaba buscando era lo que, tomé esta
25 decisión para hacer disponible el producto para el cliente."

1 INTERPRETER:

2 ...I took, I, this decision, made this decision in order
3 to make the products available for the clients.

4 DEPONENT:

5 "Y como Everest & Jennings iba a tardar tanto o no las
6 tenían disponibles..."

7 INTERPRETER:

8 And since Everest & Jennings were going to take so long or
9 else they didn't have...

10 MRS. LOURDES PAGAN GONZALEZ:

11 Have...

12 INTERPRETER:

13 ...them...

14 DEPONENT:

15 "...por eso es que decidí comprarlas a Tuffcare."

16 INTERPRETER:

17 ...that is why I decided to purchase them to Tuffcare.

18 MR. KENNETH McCULLOCH, ESQ:

19 Q So, to sum up, you purchased these wheelchairs from
20 Tuffcare because Everest & Jennings either didn't have them or
21 couldn't produce them quickly, is that correct?

22 I "Entonces, en resumen, usted le compró esto a
23 Tuffcare porque Everest & Jennings o no las tenía o no las
24 podía suplir rápido."

25 A "Sí."

1 I Yes.

2 Q What about the Quad canes? Why did you buy Quad
3 canes from, um, Tuffcare when, uh, you have been directed that
4 all canes must be acquired through Temco?

5 I "¿Y por qué compró las, las, los bastones de cuatro
6 (4) patas de Tuffcare cuando había recibido orden de, de
7 comprar todos los bastones de Temco?"

8 A "Bueno, entendiendo que eso se ordena en un vagón, un
9 "container"..."

10 I Well, understanding that, you see, those orders are,
11 are placed in, in a container...

12 A "...muchas veces, al tú coger y llenarlo de sillas de
13 ruedas te quedan unos espacios..."

14 I ...many times, when you fill it with wheelchairs you
15 have some spaces available...

16 A "...y velando por los mejores intereses de la
17 compañía, eh, yo lo que hice fue que puse los Quad canes..."

18 I ...and seeking for the best interests of the company
19 what I did was place de Quad canes...

20 A "...en esos espacios donde, si no los ponía, iba a
21 venir vacío y ya, como quiera, iba a tener que pagar por el
22 flete."

23 I ...in those spaces, where, uh, even if they didn't
24 come in there, I would still have to pay for the shipment.

25 A "Así que, prácticamente, pues, era, eh, no había

1 flete incluido en esos Quad canes. O sea, que era una, era un
2 beneficio para la compañía."

3 I So, practically, those, uh, Quad canes were received
4 without having to pay shipment, so it was in benefit for...

5 A "Y..."

6 I ...the company.

7 A "Y como era un producto que se movía, era un producto
8 de mucho movimiento, pues entendí traerlo. Mucha demanda."

9 I And since it was a product that would move a lot,
10 that was in high demand, I decided to purchase them.

11 Q Okay.

12 MRS. MARIANA NEGRON VARGAS:

13 Mister McCulloch, can we take a two (2) minutes break? I
14 just need to go to the restroom. Okay?

15 MR. KENNETH McCULLOCH:

16 Sure. Well, it's like twenty-two (2), eleven (11). I'm
17 trying, I'm going to finish, uh, this morning all by 12:30...

18 MRS. LOURDES PAGAN GONZALEZ:

19 Yeah.

20 MR. KENNETH McCULLOCH:

21 ...anyway, uh, if not sooner, so, why don't we take a five
22 (5) minute break?

23 MRS. MARIANA NEGRON VARGAS:

24 Okay. That would be great. Thank you.

25 ...OFF THE RECORD...

1 Q ...in the last quarter of 1996...

2 I "...en el último trimestre del '96..."

3 Q ...from the documents that are attached, correct?

4 A "Descontando ese, ese documento, descontando ese
5 documento... Eh, Graham Field compró a Everest & Jennings en
6 noviembre del 1996... y...

7 I Not, not counting that document... Everest, Graham
8 Field bought Everest & Jennings in November of 1996...

9 A "...no... O sea, no tenía las sillas Everest &
10 Jennings disponibles y por eso es que decidí hacer un
11 inventario de Tuffcare en lo que se completaba la transacción
12 de Everest & Jennings y me hacían disponibilidad de las sillas
13 Everest & Jennings a mí..."

14 I What I mean is I did not have the Everest & Jennings
15 products available so I made a purchase until I had available,
16 uh, the products from Everest & Jennings...

17 A "...que ya... que ya iba a ser parte de Graham
18 Field."

19 I ...which was going to be part of Graham Field.

20 Q Okay. So, from what you're saying, the reason that
21 the purchases from Tuffcare was so substantial in the last
22 quarter was because you were getting all your wheelchairs from
23 Tuffcare at that time, is that correct?

24 I "Entonces lo que nos está diciendo es que la razón
25 por la cual, eh, las compras fueron tan grandes, hubo tantas

1 | compras a Tuffcare el último trimestre es porque usted estaba
2 | comprando todas sus sillas de ruedas de Tuffcare."

3 | A "No recuerdo eso."

4 | I I don't recall that.

5 | Q Okay. Well, can you explain that? I, I didn't
6 | understand your, what you...

7 | MRS. LOURDES PAGAN GONZALEZ:

8 | Maybe...

9 | **MR. KENNETH McCULLOCH, ESQ:**

10 | Q Maybe the, the answer was not related to the
11 | question. Either way, in the last quarter of 1996, can you...
12 | tell me...? Withdrawn. Let me... In, in, in the first three
13 | (3), three (3) quarters of 1996 V.C. Medical purchased
14 | approximately five hundred and seventeen thousand dollars
15 | (\$517,000) worth of products from, from Tuffcare. Now,
16 | assuming that, in the last quarter Graham Field purchased,
17 | uh... more than fifty (50) percent as, Graham Field purchased
18 | a great deal... Withdrawn. During the last quarter, during
19 | the last quarter of 1996 the purchases by Graham Field, uh...
20 | by V.C. Medical/Graham Field were larger than the other three
21 | (3) quarters when, prior to the time that Graham Field
22 | purchased V.C. Medical. Can you explain why the purchases were
23 | larger in the last quarter of 1996?

24 | I "Durante el último trimestre de 1996, eh, Graham
25 | Field y, uh, V.C. compraron, en ese último trimestre, más de lo

1 que V.C. había comprado en los primeros tres (3) trimestres del
2 '96. ¿Puede explicarnos por qué en ese último trimestre se
3 compró más de lo que se había comprado los primeros tres (3)
4 trimestres de Tuffcare?"

5 A "Como ya había dicho antes, en noviembre de 1996
6 Graham Field compró a Everest & Jennings."

7 I As I said before, in November of 1996 Graham Field
8 purchased Everest & Jennings.

9 A "Eh, para hablar con Irwin Selinger sobre cuándo iban
10 a tener disponibles las sillas Everest & Jennings con los
11 nuevos costos, ya que antes..."

12 I After, after, uh, discussing with...

13 MRS. LOURDES PAGAN GONZALEZ:

14 Selinger.

15 INTERPRETER:

16 Uh-huh. Mister...

17 MRS. LOURDES PAGAN GONZALEZ:

18 Irwin...

19 DEPONENT:

20 Irwin.

21 MRS. LOURDES PAGAN GONZALEZ:

22 ...Selinger.

23 DEPONENT:

24 Irwin Selinger.

25

1 INTERPRETER:

2 ...Irwin Selinger when the products from, uh, E & J would
3 be available with the new prices...

4 DEPONENT:

5 "Sí. Con los nuevos precios, porque antes de Graham Field
6 comprar Everest & Jennings tenían un precio más alto..."

7 INTERPRETER:

8 Because before Graham Field purchased Everest & Jennings
9 we had higher prices...

10 DEPONENT:

11 "...lo que me dejaba espacio a mí para poder seguir
12 comprando Tuffcare."

13 INTERPRETER:

14 Which gave me space to be able to keep on purchasing from
15 Tuffcare.

16 DEPONENT:

17 "Cuando Graham, cuando Everest & Jennings es parte de
18 Graham Field..."

19 INTERPRETER:

20 Once Everest & Jennings is part of Graham Field...

21 MRS. LOURDES PAGAN GONZALEZ:

22 Graham Field.

23 DEPONENT:

24 "...después de noviembre..."

25 INTERPRETER:

1 ...after November...

2 DEPONENT:

3 "...los precios iban a ser más bajos que los que yo tenía
4 con Tuffcare..."

5 INTERPRETER:

6 ...the prices would be lower than the prices I had with
7 Tuffcare...

8 DEPONENT:

9 "...en las sillas de ruedas, las básicas."

10 INTERPRETER:

11 ...regarding the basic wheelchairs.

12 DEPONENT:

13 "Cuando iba a hacer... Uh, ¿qué pasa? Como no iba a
14 tener las sillas disponibles, eh, Irwin Selinger me dijo que
15 podíamos hacer una orden a Tuffcare..."

16 INTERPRETER:

17 So, what happens? Since we wouldn't have the wheelchairs
18 available, Irwin Selinger told me that we could, uh, purchase
19 from Tuffcare...

20 DEPONENT:

21 "...y cuando eso fuera así, entonces íbamos a comenzar a
22 usar las básicas de Everest & Jennings."

23 INTERPRETER:

24 ...and after that, we would start using the basic ones
25 from Everest & Jennings.

1 referimos solamente a esta parte de arriba. Mi pregunta es con
2 relación a las ventas, las compras en los primeros tres (3)
3 trimestres del '96, ¿por qué con menores los tres (3)
4 trimestres a las compras en el último trimestre del '96?"

5 A "Porque a principio del año '96 era V.C. Medical..."

6 I Because the beginning of 1996 we're talking about
7 V.C. Medical...

8 A "...y nosotros íbamos comprando nuestros, era más
9 limitado el capital."

10 I ...and the capital was more limited.

11 A "Cuando entra Graham Field..."

12 I When we, uh, Graham Field comes into the picture...

13 A "...teníamos que hacer las órdenes para, para,
14 hicimos la orden a base de unas ventas proyectadas para el año,
15 para comienzos del año '97..."

16 I ...we made the purchases through projected orders,
17 projected sales for the year 1997...

18 A "...las cuales eran la proyección de ventas según Mr.
19 Irwin Selinger..."

20 I ...which the sales projection, according to Mr. Irwin
21 Selinger...

22 A "...era un millón (1,000,000) por mes."

23 I ...would be a million (1,000,000) per month.

24 A "Hago esta orden y explico lo de Everest &
25 Jennings..."

1 I I placed this order and I am explaining about E &
2 J...

3 A "...porque si Everest & Jennings hubiera sido parte
4 de Graham Field para esta fecha..."

5 I ...because if Everest & Jennings had been part of
6 Graham Field for this period...

7 A "...definitivamente esta orden hubiera sido menor."

8 I ...definitely this order would have been for less
9 amount.

10 Q Okay. But from what you said... because you were now
11 part of Graham Field you had greater access to capital and
12 could, could make larger orders, is that correct?

13 I "Pero, de acuerdo a lo que usted ha dicho, ¿como
14 ahora eran parte de Graham Field tenían acceso a un capital
15 mayor y podían hacer compras más grandes?"

16 A "Sí."

17 I Yes.

18 Q Okay. Did I get my page back?"

19 INTERPRETER:

20 This one?

21 MR. KENNETH McCULLOCH:

22 No, uhm, from the, from the transcript.

23 INTERPRETER:

24 Oh.

25

1 MRS. MARIANA NEGRON VARGAS:

2 I just have a few questions...

3 MRS. LOURDES PAGAN GONZALEZ:

4 Okay.

5 MRS. MARIANA NEGRON VARGAS:

6 ...uh, just to clarify some things. Can, can you hear me?

7 COURT REPORTER:

8 No, I need...

9 MRS. MARIANA NEGRON VARGAS:

10 Okay.

11 COURT REPORTER:

12 ...the, the microphone...

13 MRS. LOURDES PAGAN GONZALEZ:

14 Okay. Uh, if you want to sit here?

15 MRS. MARIANA NEGRON VARGAS:

16 Um, I think... Can you hear me okay now?

17 COURT REPORTER:

18 It's okay.

19 MRS. MARIANA NEGRON VARGAS:

20 Thank you.

21 COURT REPORTER:

22 Yes.

23 ...OFF THE RECORD...

24 ...CROSS-EXAMINATION...

25

1 MRS. MARIANA NEGRON VARGAS, ESQ:

2 Q Uh, when you were talking about, uh, your
3 relationship with Irwin Selinger you mentioned that he was
4 worried that you were selling, continuing to sell competitive
5 products from Tuffcare. Is that correct?

6 I "Usted dijo que de sus conversaciones con Irwin
7 Selinger él estaba preocupado porque usted seguía, eh,
8 vendiendo productos que eran competitivos de Tuffcare. ¿Eso es
9 correcto?"

10 A "Sí."

11 I Yes.

12 Q Um, and did Mr. Selinger tell you at any time that
13 you had to stop, that you should stop selling Tuffcare
14 products?

15 I "¿Y en algún momento el señor Selinger le dijo a
16 usted que tenía que dejar de vender productos Tuffcare?"

17 A "Sí."

18 I Yes.

19 Q And did he say that the reason for you to stop buying
20 from Tuffcare was because Graham Field had competing lines that
21 you were supposed to sell?

22 I "¿Y él le dijo que por la razón que debía dejar de
23 comprar a Tuffcare era que Graham Field tenía líneas, eh,
24 competitivas, eh, las cuales usted, de las cuales usted tenía
25 que comprar?"

1 A "Sí."

2 I Yes.

3 Q Okay. Referring now to Exhibit seventeen (17)...

4 I "Refiriéndonos ahora al Exhibit diecisiete (17)..."

5 Q ...which is the letter, the fax that Mr. Selinger
6 sent back to you regarding the September 23, 1997 memo...

7 I "...que es el fax que le envió el señor Selinger como
8 respuesta del memo de Agosto del..."

9 Q "Septiembre 23."

10 I "...septiembre 23 del..."

11 MRS. LOURDES PAGAN GONZALEZ:

12 '97.

13 INTERPRETER:

14 ...'97...

15 DEPONENT:

16 "Sí."

17 INTERPRETER:

18 Yes.

19 MRS. MARIANA NEGRON VARGAS, ESQ:

20 Q Uh, regarding the next to last paragraph...

21 I "Con relación al penúltimo párrafo..."

22 Q ...it starts, uh, "I recommend to take, make one (1)
23 more order".

24 I "...usted dice ahí "recomiendo hacer una (1)..."..."

25

1 MRS. LOURDES PAGAN GONZALEZ:

2 "Orden más."

3 INTERPRETER:

4 "...otra orden."

5 MRS. LOURDES PAGAN GONZALEZ:

6 "Una (1) orden más." One (1) more order.

7 INTERPRETER:

8 "Una (1) orden más."

9 MRS. MARIANA NEGRON VARGAS, ESQ:

10 Q Did you mean that you should make one (1) last order?

11 Would that be a correct interpretation of that sentence?

12 I "¿Una interpretación correcta de esa oración sería
13 que usted decía que deberían hacer una última orden, poner una
14 última orden?"

15 A "No, lo que yo quería decir con eso es hacer una
16 orden para tomar tiempo y tratar de hablar con ellos en
17 mantenerlos, en, en mantener la misma relación que teníamos
18 antes..."

19 I No, what I meant was to make one (1) more order for
20 the time being with them to buy time and during time we would
21 have conversations with them as to keeping the relationship
22 for, uh, further on...

23 A "...manteniendo algunos, pues, manteniendo su
24 presencia en la isla."

25 I ...and keeping their presence in the island.

1 Q Okay. Uh... then it says "in this process, I can try
2 to make them change their mind about open a facility here". Is
3 that what you meant, then?

4 I "¿Y esto es lo que usted quiso decir, lo que dice
5 ahí, "puedo entonces tratar de hacer que cambien de idea de
6 abrir una facilidad aquí"? ¿Eso es lo que usted quería decir?"

7 A "Sí."

8 I Yes.

9 Q En el último párrafo la, la primera oración dice...

10 I The first sentence in the last paragraph says...

11 Q "...also... I, I know I speak fast. I'm sorry.
12 "Also, in this way, they are not going to be aggressive trying
13 to find a distributor."

14 I "Dice: "También en esta fase, ellos no van a ser
15 agresivos..."

16 MRS. LOURDES PAGAN GONZALEZ:

17 "Tratando de..."

18 INTERPRETER:

19 "...trabajar en una forma agresiva tratando de conseguir
20 a otro distribuidor."

21 DEPONENT:

22 "Sí."

23 INTERPRETER:

24 Yes.

25

1 **MRS. MARIANA NEGRON VARGAS, ESQ:**

2 Q Okay. I'm trying to phrase the question so that it's
3 the correct way. Um... Was this a way to, to keep Tuffcare
4 sales in Puerto Rico at a minimum... while avoids, so that you
5 would avoid having a direct competitor in Puerto Rico?

6 **MR. KENNETH McCULLOCH:**

7 Objection to the form of the question. He had, you would
8 have to define minimum, uh...

9 **MRS. MARIANA NEGRON VARGAS:**

10 Okay, I'll rephrase it...

11 **MR. KENNETH McCULLOCH:**

12 Yeah.

13 **MRS. MARIANA NEGRON VARGAS, ESQ:**

14 Q ...Counsel. Let me rephrase. Um... was this a way
15 for, for... Graham Field to avoid having another Tuffcare
16 distributor that perhaps would become a bigger competitor?

17 I "¿Esta era una manera de Graham Field evitar tener
18 otro, eh, competidor de Tuffcare que tal vez se volviera en un
19 distribuidor mayor?"

20 A "Sí, lo manteníamos al lado de nosotros."

21 I Yes, it would keep them on our side.

22 Q Um, I, I have a question. When it says "this would
23 give me time to tie Borschow and Joe Reyes' business", who
24 were, um, what, what does that sentence refer to?

25 I "Otra cosa, cuando dice ahí "esto me dará tiempo, uh,